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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,606	04/02/2001	Paul Gaschke		8217

7590 11/25/2002

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HARTSDALE, NY 10530

EXAMINER

WEISS JR, JOSEPH FRANCIS

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,606

Applicant(s)

Gaschke

Examiner

Joseph Weiss

Art Unit

3761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 26, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 9, 11, 13, and 18-26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 11, 13, and 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

Art Unit: 3761

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19 & 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 19, line 3, what is "its"?

In regards to claim 26, line 3, what is "its"?

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 13, 18-19 & 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroup (US 4610247) in view of Sachs (US 3288138).

In regards to claim 18, Stroup substantially discloses the instant application's claimed invention to include a head garment (11) having face protective portions (note the covering of the chin, cheeks etc of the user in fig 1) with first and second openings positioned over the mouth and

Art Unit: 3761

nose of the user (13 the opening under 15 for the nose) and a nose channel forming member (15) integral with the head gear and which forms a nose channel for passage of exhaled air from the nose to the nose channel forming member's outlet openings (24), but does not explicitly disclose the mouth channel forming member, not the attachment of the mouth and nose forming channel members and the alignment of the two members as set forth in the claim. However, Sachs disclose a mouth channel forming member (10) which is mountable on the head garment, has a solid outer surface extending over the wearer's mouth and nose with a first opening alignable with the first opening of the garment (opening defined by 116 & 127) and a second opening alignable with the second opening of the garment (132), which are between the solid outer surface and the facial portions of the garment, and which directly shields the oro-nasal region of the user from ambient atmosphere, the mouth channel forming member having third and fourth lateral air inlet-outlets (16 & 18), laterally spaced from the first and second openings, to direct air away from and sideways with respect to the user's oro-nasal region, and the mouth forming channel member being configured to form a mouth channel for directing the wearer's exhaled air after passage through the garment's first and second openings through the mouth channel to the mouth-channel forming member's third or fourth inlet-outlet openings and together with the face protective portions minimize any moisture present in the exhaled air from the mouth or nose condensing against the wearer's face.. The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Sachs and

Art Unit: 3761

used them with the device of Stroup. The suggestion/motivation for doing so would have been to optimize the warm air affect of the device by harnessing the exhaled gas of both the oral and nasal cavities. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 19, the suggested device discloses the nose channel's inlet-outlet openings being locate able within the mouth-channel member's mouth channel (note that the mask will cover the nose channel device of Stroup).

In regards to claim 21, the suggested device discloses a parallel arrangement of the first and second nose channel inlet-outlets with the third and fourth mouth channel inlet-outlets.

In regards to claim 22, the suggested device discloses the mouth channel forming element comprising a fourth inlet-outlet opening, the nose channel outlets aligned in parallel with those of the mouth forming channel and forms a nose channel for the passage of exhaled air from the nose to the nose channel forming member's second inlet-outlet opening.

In regards to claim 23, the references noted above substantially disclose the claimed invention except for the mouth channel forming member being configured such that exhaled air

Art Unit: 3761

from the mouth channel forming member's third/forth inlet-outlet openings direct exhaled air in a "generally downward direction" relative to the user's nose.

It is noted that applicant's specification does not set forth such, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 24, the suggested device discloses a means for preventing cold air into the nose channel (Stroup, 16) however this is not located on the mouth forming channel.

It is noted that applicant's specification does not set forth such, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather

Art Unit: 3761

than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 25, the claim is rejected as noted above in respect to claim 18 which is herein incorporated by reference and furthermore, forming separate and independent nose and mouth channels with separate and independent inlet-outlet openings wherein the exhaled gas from a user's nose avoids the mouth of the user and wherein the two channels cooperate together to minimize moisture present in the exhaled air from the nose or mouth condensing against a user's face.

In regards to claim 26, the suggested device discloses the nose channel's inlet-outlet openings being locateable within the mouth-channel member's mouth channel (note that the mask will cover the nose channel device of Stroup).

In regards to claim 8, the suggested device discloses the nose channel forming member is removably inset within the mouth channel forming member.

In regards to claim 13, Stroup discloses the use of a head garment with two panels that may be characterized as "upper" and "lower" when the garment is in use relative to the user's head with the lower panel forming a pocket for the user's nose.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stroup & Sachs as applied to claim 18 above, and further in view of Jackson (US 4141086).

In regards to claim 20, the suggested device substantially discloses the instant application's claimed invention, but does not explicitly disclose the use of goggles. However,

Art Unit: 3761

Jackson disclose such (goggles 30) . The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Jackson and used them with the suggested device. The suggestion/motivation for doing so would have been to protect the eyes of the user. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

6. Claims 9 & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroup & Sachs as applied to claim 18 above, and further in view of Daneshvar (US 5839432).

In regards to claim 9, the suggested device substantially discloses the instant application's claimed invention, but does not explicitly disclose a mouth disc with a hole passed through the disc's center for fastening around the first hole of the head garment. However, Daneshaver disclose such (See fig 4, disk 34, holes 35 or 36). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Daneshvar and used them with the suggested device. The suggestion/motivation for doing so would have been to better regulate the flow of air through the hole. Therefore it

Art Unit: 3761

would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 11, the suggested device discloses the disc & nose forming channels as attached to the head garment and the mouth forming channel being mounted to both the nose forming channel & the disc.

Response to Arguments

7. Applicant's arguments with respect to claims 8, 9, 11, 13, 18-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6272690, 6263874, 6019101, 4941211, 3736928, 3500825, 2751905, 1202510, 1171973, 1166462, 1077042

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

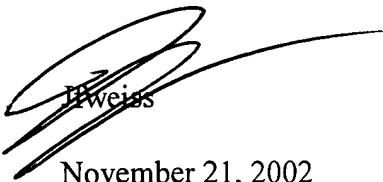
Art Unit: 3761

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

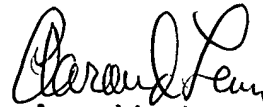
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph F. Weiss, Jr., whose telephone number is (703) 305-0323. The Examiner can normally be reached from Monday-Friday from 8:30 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Weilun Lo, can be reached at telephone number (703) 308-1957. The official fax number for this group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.



J. Weiss
November 21, 2002



Aaron J. Lewis
Primary Examiner